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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,355	09/29/2003	Edward R. Newton	1898-4	3010

7590 04/07/2005

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

4

Office Action Summary

Application No.

10/672,355

Applicant(s)

NEWTON, EDWARD R.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment filed January 14, 2005, and the arguments presented therewith have been fully considered and they are persuasive in light of the amended claims 20-25. Therefore, the rejection has been withdrawn. Note that applicant cancels claims 1-20 and presents new claims 21-25. However, upon further consideration, a new ground(s) of rejection is made in view of Bradley (6,264,026) or Emery (2,997,196). Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

Drawings

2. The drawings are objected to because "the height of the first, second, and third support elements (26,28,30) (from figure 1) appear to be too short (in comparison with figures 2-4). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meanings of the recited phrases "each of the slots extending inwardly from said peripheral edge" (claim 21, line 3) and "each of said plurality of slots extending inwardly from said peripheral edge" (claim 25, line 3) are not clearly understood. It is pointed that applicant does not clearly define "a peripheral edge" and it is unclear as to the meaning of the "inwardly the peripheral edge" or "the outwardly of the peripheral edge". Moreover, the recited phrase "said curved edge" (claim 22) is vague and indefinite. Applicant defines the peripheral edge as having a first (front) curved edge (claim 21, line 6) and a second (back) curved edge (claim 21, line 6) wherein the radius of the back edge is greater than a radius of the front edge. The recited "curved edge" is unclear as to whether it refers to "the front curved edge" or "the back curved edge".

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 25, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Bradley (6,264,026).

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Bradley (6,264,026) discloses a beverage holder (see Exhibit A) comprising a panel (15,33) having a peripheral edge (see Exhibit A), the panel having a plurality of slots openings at the peripheral edge, each of the plurality of slots extending from the peripheral edge (see Exhibit A), the panel having a top surface and a bottom surface, a support element extending downwardly from the bottom surface (15) of the panel (see Figs. 5 and 6), the support element comprising a first support member (29) (Figs. 5 and 6) extending downwardly from a central area, a second support member, and a third support member, wherein the each support member being tapered (Fig. 6) having a wide diameter at the bottom surface (Fig. 5) and a narrow diameter at the bottom (30) of the support member (see Fig. 6), and the bottom ends (30) of the support members are coplanar with each other and in parallel planar in relation with the panel (15) (lines 47-65 of Col 6).

7. Claim 25, as best understood, is rejected under 35 U.S.C. 102(b) as being anticipated by Emery (2,997,196).

Emery (2,997,196) discloses a beverage holder (see Exhibit B) comprising a panel (Fig. 1) having a peripheral edge (12) (see Exhibit B), the panel having a plurality of slots openings at the peripheral edge, each of the plurality of slots extending from the peripheral edge (see Exhibit B), the panel having a top surface and a bottom surface, a support element extending downwardly from the bottom surface (Fig. 2) of the panel, the support element comprising a first support member (16) extending downwardly from a central area, a second support member (16), and a third support member (16), wherein each support member being tapered (Figs. 2 and 3) having a wide diameter at the bottom surface and a narrow diameter at the bottom of the support member (see Figs. 2

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and 3), and the bottom ends of the support members are coplanar with each other and in parallel planar in relation with the panel (see Figs. 2 and 3).

Allowable Subject Matter

8. Claim 21 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

9. Claims 22-24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claim 25 (previous claims 15-17 with new limitation) have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Applicant's amendment (the addition of new limitations and the combination of limitations in new claims 21-25) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ptc

PTC


 4/4/05
DEAN J. KRAMER
PRIMARY EXAMINER

Exhibit A

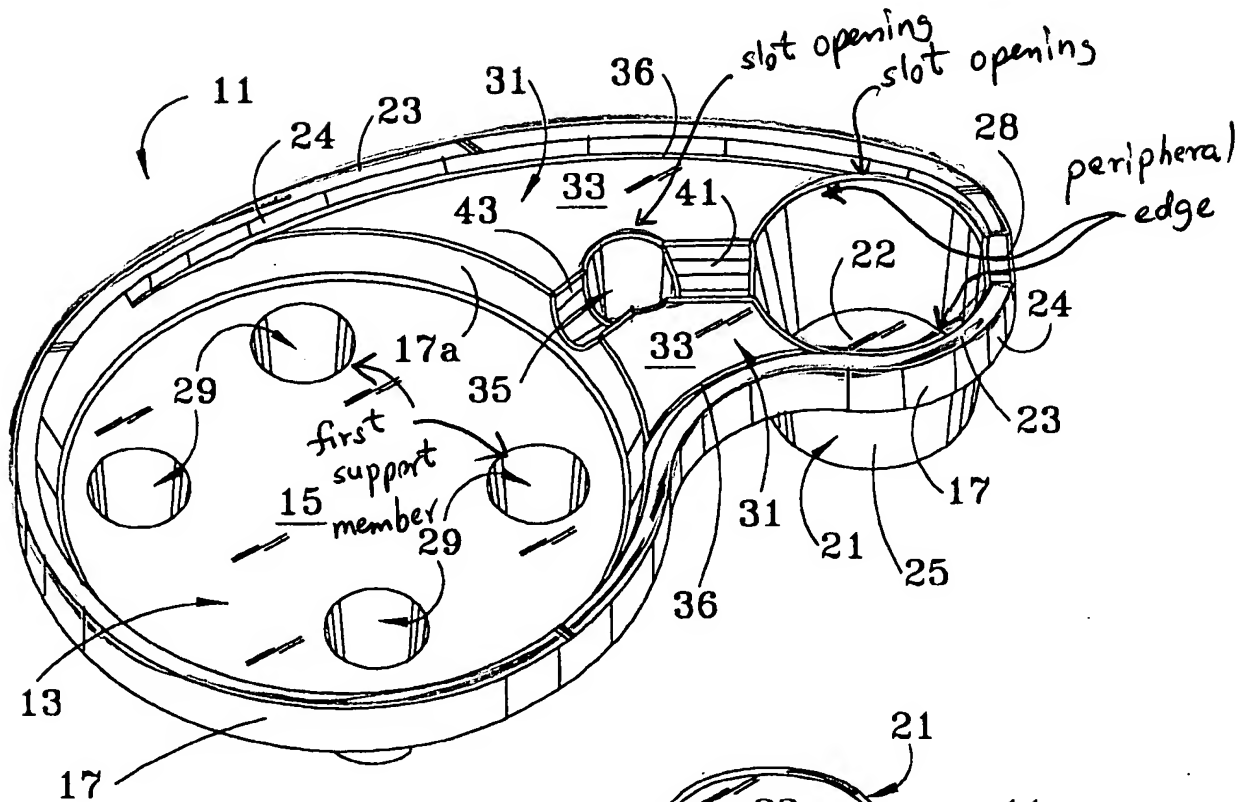


FIG. 5

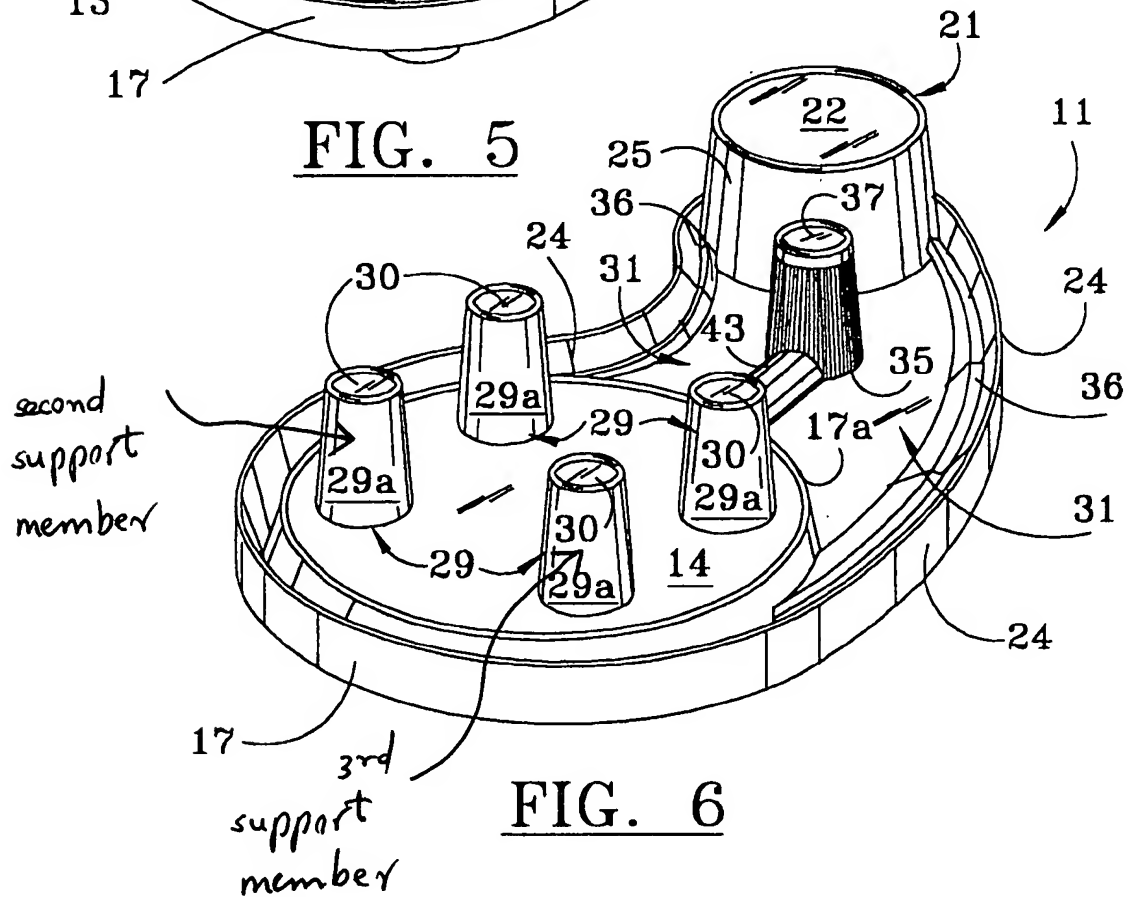


FIG. 6

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Exhibit B

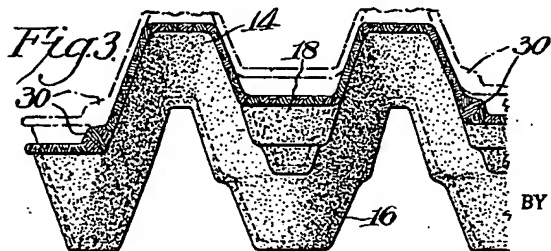
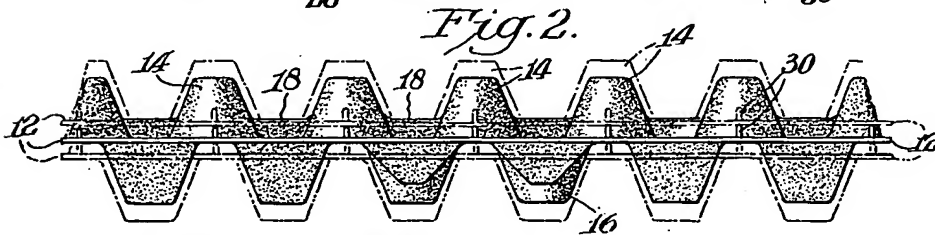
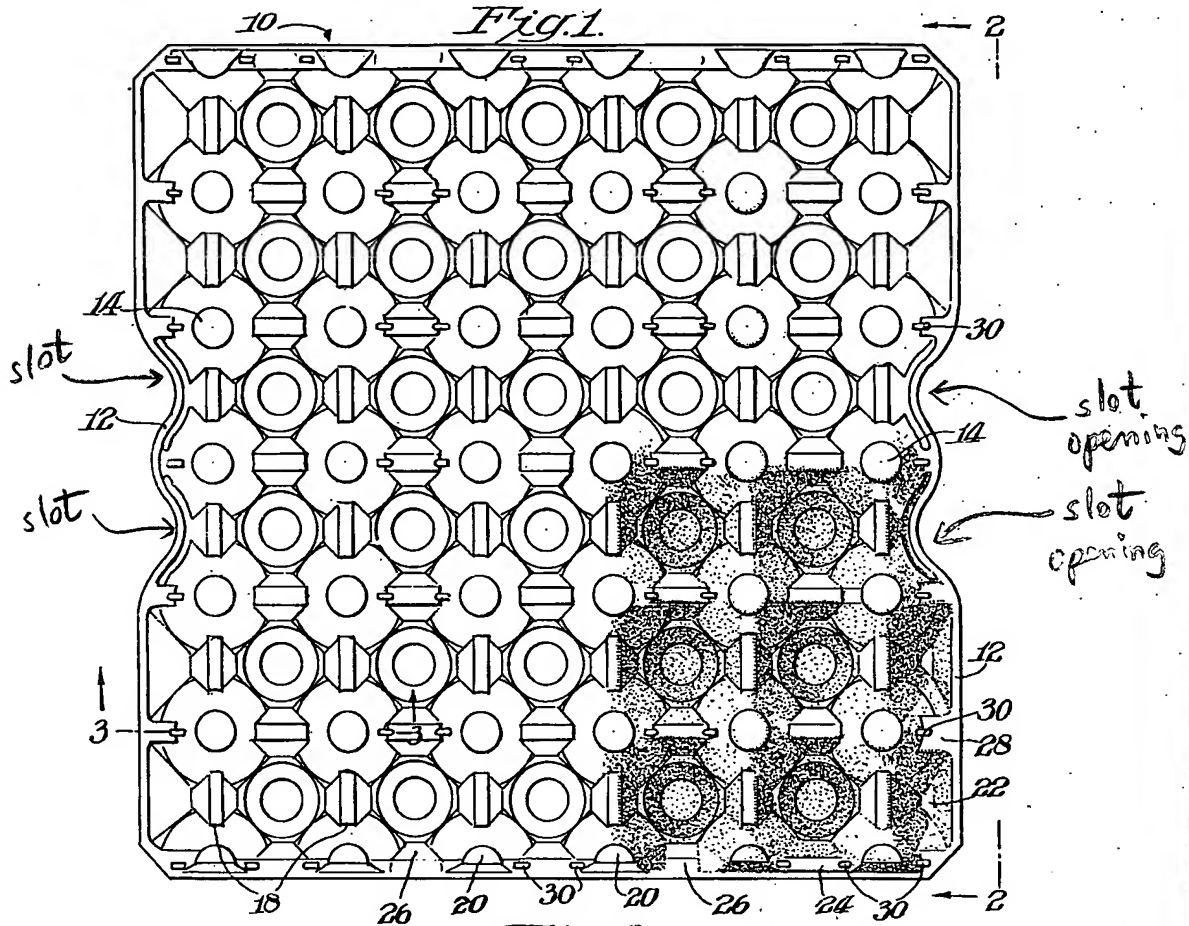
Aug. 22, 1961

R. L. EMERY

2,997,196

DE-NESTABLE MOLDED PULP TRAYS

Filed Oct. 10, 1957



INVENTOR
Richard L. Emery

BY *Connolly and Hutz*

ATTORNEYS